

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Robert
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FILE: B-208660.2**DATE:** December 28, 1982**MATTER OF:** Southwest Truck Body Company--Request for
Reconsideration**DIGEST:**

GAO will not consider a protest by the second low bidder that the agency failed to verify an allegedly mistaken low bid properly beyond advising the procuring agency of a possible mistake for verification purposes. Only the contracting parties--the Government and the firm in line for award--are in a position to assert rights and present evidence to resolve mistake-in-bid questions.

Southwest Truck Body Company requests reconsideration of Southwest Truck Body Company, B-208660, September 8, 1982, 82-2 CPD 212, in which we summarily denied Southwest's protest that the Department of the Army did not seek proper verification of the low bid submitted by Davey Compressor Company under invitation for bids (IFB) No. DAAA09-82-B-5556 prior to awarding a contract to that firm. Southwest, the second low bidder under the IFB, maintains that our summary denial of its protest failed to address all of the arguments it raised concerning the knowledge the contracting officer allegedly had about Davey's low bid which should have put the agency on notice of a suspected mistake and therefore required bid verification.

We denied Southwest's protest summarily in our September 8 decision because it was clear that the protest on its face lacked legal merit. In doing so, however, we did not mean to suggest that we will routinely review protests of this nature; indeed, Southwest's protest could have been dismissed.

Under the mistake-in-bid procedures, a contracting officer who knows or should know of the possibility of a mistake in the low bid must request verification from the bidder. Once verified, the bid generally may be accepted with confidence that the bid price actually reflects the bidder's intention. If the bidder responds by claiming a mistake (or claims mistake after award, alleging that the

verification request was inadequate), the bid may be withdrawn (or the contract reformed) upon a clear and convincing showing of mistake; the bid may be corrected upward if it remains the low bid when the firm also clearly shows the bid price actually intended. See, e.g., 42 Comp. Gen. 723, 724 (1963).

Mistake-in-bid verification and correction procedures afford the Government the financial benefit of accepting a corrected low bid, instead of permitting the withdrawal of the uncorrected mistaken bid, while at the same time not prejudicing other bidders who remain higher even after upward correction of the low bid. We do not believe that higher bidders should have the right to insist that the Government reject the low bid and forego award at a lower price on the basis of their view that the bid is so low it must be mistaken. See B-148117, March 22, 1962. Rather, only the contracting parties--the Government and the firm in line for award--are in a position to assert rights and bring forth all necessary evidence to resolve mistake-in-bid questions. Engineering Research, Inc., B-187067, August 6, 1976, 76-2 CPD 134.

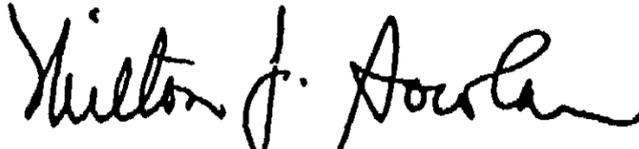
Moreover, consideration of a higher bidder's protest in effect would necessitate that we judge whether the lower bid appears unreasonably low, and if it does, whether the Government must reject it. We consistently have stated, however, that the submission of a bid which a competitor considers too low does not constitute a legal basis for precluding a contract award. Contra Costa Electric, B-206487.2, May 7, 1982, 82-1 CPD 440. (Of course, even a verified low bid may not be accepted if it would be unconscionable to require performance at that price. See 53 Comp. Gen. 187 (1973).) The rejection of a bid as unrealistically low requires a determination that the bidder is not responsible, i.e., not capable of performing at the bid price. Hybrid Abstracts, B-207083, May 24, 1982, 82-1 CPD 488. That determination is left to the sound discretion of contracting officials, and consequently we do not review affirmative responsibility determinations except in limited circumstances, which are not involved in this type of case. See Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121.

We therefore do not consider a protest that the low bid is mistaken beyond our advising the agency concerned that, for purposes of verification before award, the possibility of mistake has been suggested. Potomac Industrial Trucks, Inc., B-188146, January 21, 1977, 77-1 CPD 45. Our prior decision in this case was rendered simply because it was clear on the facts presented by the protester that there was no verification duty on the part of the contracting officer. Although

B-208660.2

the protester continues to dispute that, no useful purpose would be served by our reconsidering the prior decision in light of our more general position as set forth above and since award has been made.

Therefore, the request for reconsideration is denied.

for 
Comptroller General
of the United States